

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Facilitating Shared Use in the 3100-3550 MHz	)	WT Docket No. 19-348
Band	)	

**RURAL WIRELESS ASSOCIATION, INC. PETITION FOR RECONSIDERATION**

The Rural Wireless Association, Inc. (“RWA”)<sup>1</sup>, pursuant to Section 405 of the Communications Act of 1934, as amended (“the Act”) and Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, hereby seeks reconsideration of the Commission’s Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, adopted on March 17, 2021 in the above-captioned proceeding.<sup>2</sup> Specifically, RWA seeks reconsideration of the following two aspects of the *Order*: (1) the decision to award licenses based on Partial Economic Areas (“PEAs”); and (2) the decision to adopt a 15-year license term.

**I. In Adopting PEA-Sized License Areas, the Commission Improperly Ignored its Obligations Under Section 309(j) of the Communications Act**

In its *Order*, the FCC adopted PEAs as the license area for 3.45 GHz licenses notwithstanding the arguments in the record that PEAs would “effectively foreclose the vast majority of potential users and use cases from accessing or utilizing this band, given that PEAs are much too large for the service needs of rural broadband service providers, private network

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<sup>1</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>2</sup> *Facilitating Shared Use in the 3100-3550 MHz Band*, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, WT Docket No. 190348 (rel. March 18, 2021) (“*Order*”).

operators, and electric utilities and other operators of critical infrastructure.”<sup>3</sup> RWA and numerous other commenters urged the Commission to adopt county-sized license areas in lieu of PEAs,<sup>4</sup> but the Commission concluded that notwithstanding the “benefits of smaller license areas as a general matter” (e.g., that “smaller license areas would allow a wider range of entities to participate in the auction, and could benefit small and rural entities by potentially allowing them to obtain spectrum rights at lower prices than if they were required to purchase an entire PEA”), smaller license areas are not needed since the *Order* “provide[s] other means for small and rural entities to face a more level playing field in the 3.45 GHz band auction, including by adopting a 40-megahertz in-band spectrum aggregation limit and bidding credits for small and rural entities.”<sup>5</sup> The Commission’s conclusion that “these other means” will allow small rural entities to compete in the auction is unsupported and fails to meet the Commission’s obligations under Section 309(j) of the Communications Act of 1934, as amended (“the Act”), and constitutes material error warranting reconsideration.

As RWA, NTCA and others have previously pointed out, County-based licenses would provide for efficient use of spectrum, encourage deployment of wireless broadband services in rural areas, and promote investment and rapid deployment of new technologies and services by providing small companies with the ability to acquire 3.45 GHz spectrum while preserving the ability of new entrepreneurs and niche businesses to obtain spectrum and spur quick deployment

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<sup>3</sup> See Letter from David D. Rines, Counsel to Southern Communications Services, Inc. d/b/a Southern Linc (“Southern Linc”), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348, March 4, 2020 (“Southern Linc Ex Parte”) at p. 2. See also Joint Comments of NTCA – The Rural Broadband Association and the Rural Wireless Association (“NTCA/RWA Comments”), filed Nov. 20, 2020, at pp. 2-7; Letter from Louis Peraertz, Vice President of Policy, Wireless Internet Service Providers Association (“WISPA”), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348, March 5, 2021 (“WISPA Ex Parte”) at pp. 1-2; Letter from Alexi Maltas, SVP & General Counsel, Competitive Carriers Association (“CCA”), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348, AU Docket No. 20-429, March 5, 2021 (“CCA Ex Parte”) at p. 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Order* at par. 113.

with low capital expense in very localized areas.<sup>6</sup> As WISPA stated, counties will not only encourage rural carrier participation, “buildout rules at the county level will ensure that *all* counties, even rural counties, are subject to buildout requirements.”<sup>7</sup> Licensing by PEAs, on the other hand, would deter buildout in sparsely populated rural and low-income counties of the PEAs.<sup>8</sup> Indeed, under the licensing rules adopted by the Commission, winning bidders could meet their performance obligations merely by covering the urban center of one or a few counties in its PEA.<sup>9</sup>

The Commission wrongly assumes that the adoption of a spectrum aggregation limit and bidding credits for small and rural entities is sufficient in itself to overcome the impediments to broad auction participation that PEA-sized license area would impose. As a number of parties have previously made clear, “[w]ithout the availability of county-sized licenses, other measures intended to promote an ‘equitable distribution of licenses and services among geographical areas’ and ‘economic opportunity for a wide variety of applicants’ are meaningless.”<sup>10</sup>

When establishing rules governing how new spectrum licenses will be awarded through competitive bidding, the Commission cannot ignore or sidestep the Congressional mandates articulated in Section 309(j) of the Act. The Act requires the Commission to adopt safeguards to protect the public interest in the use of the spectrum and to promote purposes of the Act – which

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<sup>6</sup> NTCA/RWA Comments at pp. 5-6.

<sup>7</sup> WISPA Ex Parte at p. 2 (emphasis added). *See also* Comments of the Wireless Internet Service Providers Association, WT Docket No. 19-348, Nov. 20, 2020 (“WISPA Comments”), at p. 18 (“Rural counties are much more likely to be expeditiously served if the Commission employs county-based licensing and measures compliance performance requirements across smaller, more numerous counties.”)

<sup>8</sup> NTCA/RWA Comments at p. 6. *See also* Southern Linc Ex Parte at p. 2.

<sup>9</sup> WISPA Comments at pp. 18-19.

<sup>10</sup> Southern Linc Ex Parte at p. 2; *see also* NTCA/RWA Comments at p. 2 (“To be sure, the Commission’s proposal to offer bidding credits to ‘small’ and ‘very small’ businesses is a good start, but the Commission must not by law stop there.”).

include making radio communication service available “to *all* the people of the United States.”<sup>11</sup>

Section 309(j)(3) further sets forth certain objectives, including:

- (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public *including those residing in rural areas*, without administrative or judicial delays; and
- (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people *by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.*<sup>12</sup>

In Section 309(j)(4) of the Act, Congress further compelled the Commission to:

- (B) include performance requirements such as appropriate deadlines and penalties for performance failures, *to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees*, and to promote investment in and rapid deployment of new technologies and services; [and]
- (C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, *prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas; (ii) economic opportunity for a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services.*<sup>13</sup>

The use of PEAs does not achieve or even attempt to achieve these objectives. The record makes clear that in most cases, only large carriers will have the resources to serve PEAs and such carriers do not have the economic incentive to build out in a timely manner to the most rural portions of these areas. The record makes clear that license areas smaller than PEAs are required in order to ensure that licenses are disseminated to a wide variety of applicants. Indeed,

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<sup>11</sup> 47 U.S.C. § 151 (emphasis added).

<sup>12</sup> 47 U.S.C. § 309(j)(3)(A)-(B) (emphasis added). The Supreme Court, in its *Adarand* and subsequent *VMI* decisions, struck down preferential treatment of minorities and women. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227-230 (1995) and *United States v. Virginia*, 518 U.S. 515, 531-534 (1996).

<sup>13</sup> 47 U.S.C. § 309(j)(4)(B)-(C) (emphasis added).

as many parties have pointed out, the Citizens Broadband Radio Service (“CBRS”) auction (which used counties as license areas) attracted the greatest number and diversity of bidders in history.<sup>14</sup> The *Order*’s failure to adequately address these concerns and to address the record arguments that aggregation limits and bidding credits are inadequate to alleviate them constitutes material error, and the adoption of PEA-sized license areas should therefore be reconsidered.

The *Order* offers two reasons in defense of the decision to adopt PEA. First, it states that the high power levels authorized in the *Order* “allow larger coverage areas and encourage providers to take advantage of macro-cell deployments where possible, which are better suited to PEAs than a smaller license area.”<sup>15</sup> However, the coverage of macro-cells typically extends 10 to 12 miles, a distance that nests well within the confines of most county boundaries.<sup>16</sup> Second, and the reason cited by the Commission for choosing PEAs over counties or census tracts, the *Order* states that “the availability of spectrum aggregation across other bands with similar technical rules make PEAs a better choice for the 3.45 GHz Service.”<sup>17</sup> While it is true that the license-size rules adopted for the 3.45 GHz band align with those of the 3.7 GHz band, it is equally true that adopting county-sized license areas would align with the license size for the CBRS band. As CCA has noted, “county-based licenses are preferable here since this spectrum

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<sup>14</sup> See, e.g., Southern Linc Ex Parte at p. 1; WISPA Ex Parte at p. 2 (“the obligation to serve rural counties was not a deterrent to broad participation in the CBRS PAL auction – the results of that auction also demonstrated that auctioning spectrum by counties is a [sic] much more effective at encouraging deployment throughout the country as winning bids were placed in 3,220 of the 3,233 counties nationwide – more than 99 percent of all counties.”)

<sup>15</sup> *Order* at par. 111.

<sup>16</sup> The *Order* cites to T-Mobile reply comments noting “that higher power levels combined with PEA license areas will promote service in rural areas.” *Order* at par. 111. It is equally true that higher power levels combined with county license areas will promote service in rural areas. Of course, as noted above, service to rural areas will only be truly promoted if license areas are utilized that will actually promote participation by rural carriers and other small entities that plan to actually serve these rural areas.

<sup>17</sup> *Id.* at par. 112.

is adjacent to the CMRS band that is licensed by counties.”<sup>18</sup> The *Order’s* alignment argument does not provide an adequate basis for adopting PEAs over counties.

## **II. The FCC’s Decision to Adopt 15-year License Terms Constitutes Material Error as it Fails to Account for the Adverse Impact of Such License Terms on Rural Areas**

As discussed above and noted by WISPA, the licensing rules adopted by the Commission “mean that over the first 12 years of a 15-year license term, a winning bidder for the vast majority of PEA licenses may not need to deploy service to one or more of the counties in its PEA.”<sup>19</sup> Accordingly, the adoption of 15-year license terms means that many of the most rural areas in the country are unlikely to see service for over a decade, if at all, leaving them stranded for half a generation on the wrong side of the digital divide. The *Order* failed to address this concern. The Commission should therefore reconsider its decision to adopt a 15-year license term, and instead adopt a 10-year license term subject to “use it or lose it” as it is adopted in other bands.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

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<sup>18</sup> CCA Ex Parte at p. 2.

<sup>19</sup> WISPA Comments at pp. 18-19.

